Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK
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In The
Supreme Court of the United States

Robert W. Douglas,
Petitioner

v.

United States,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals For
The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

These questions are about the taking of money from the petitioner's bank account without any consent, signature, agreement or court order, against the petitioner's will and in violation of his Constitutional Rights.

Did the Fifth Circuit Court err in classifying the petitioner as a Taxpayer after considering the definition within the statutes and the status claimed by the petitioner?

Did the Fifth Circuit Court err in holding that Congress, Quasi Federal Governmental Agencies and Federal Governmental Agencies have the power under IRC and statutes to deny due process to the petitioner as guaranteed by the 5th Amendment of the Constitution?

Did the Fifth Circuit Court err in holding that statutes 26 USC §§§ 6020, 6321 and 6322 are enforceable upon the petitioner without issuance as regulations under 26 CFR, Subtitle A, Part 1 Income Tax and thereby binding upon petitioner?

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceedings in the United States Court of Appeals for the Fifth Circuit were petitioners Robert W. Douglas and United States. None of these parties are either publicly held or affiliated with an entity that is so held.

TABLE OF CONTENTS

	QUESTION PRESENTED	i
	DISCLOSURE STATEMENT	ii
	TABLE OF CONTENTS	iii
	TABLE OF AUTHORITIES	iv
I.	PETITION FOR WRIT OF CERTIORARI	1
II.	OPINION	1
III.	JURISDICTION	1
IV.	CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
V.	STATEMENT OF THE CASE	2
VI.	REASONS FOR GRANTING THE WRIT	5
VII.	CONFLICT: THE FIFTH CIRCUIT COURT WITH THE CONSTITUTION	8
VIII.	CONFLICT: THE FIFTH CIRCUIT COURT WITH STATUTES	9
IX.	CONFLICT: THE FIFTH CIRCUIT COURT WITH THE SUPREME COURT	13
	A. DUE PROCESS	13
	B. REGULATIONS	16
X.	SEVERE INJUSTICE	18
XI.	CONCLUSION	20

APPENDIX 1, 2, 3 23-32

TABLE OF AUTHORITIES

CONSTITUTION

Article I, §2, Cl. 3
Article 1, §8, Cl. 17
Article 1, §9, Cl. 4
Article IV, §3, Cl. 2
Article VI, Cl. 2
5th Amendment
14th Amendment

CASES

Almeida-Sanchez v. United States, 413 US 266, 272, 37 L Ed 2d 596, 93 S Ct. 2535 (1973)
Armstrong v. Manzo, 380 U.S. 551
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Bell v. Burson, 402 U.S. 535, 542,
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Brady v. U. S., 397 U. S. 742 at 748.
Bushmann v. Schweiker, 676 F.2d 352(1982).
Caha v. United States, 152 U. S. 211, 215, S. Ct. 513 (1894)
California Bankers Assoc. v. Shultz, 416 U. S. 25, 44, 39 LE d2d 812, 94 S Ct 1494
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Economy Plumbing and Heating Co. v. United States, 470 F.2d 585 (1972)
Goldberg v. Kelly, 397 U.S. 254,
Hotch v. United States, 212 F.2d 280(1954)
Marbury v. Madison, US 137, 174, 176
Miranda, v. Arizona, 384 US 436 p.491
Sniadach v. Family Finance Corp. of Bay View, et al 395 U.S. 337, 23 L Ed 2d 349, 89 S. Ct. 1820 (1969)

Stafford v. Commissioner, 73 T.C.M. (CCH) 1848, 1851-1852 (1997).
U. S. v. Mersky, 361 US 41, (1961)
U. S. v. Perkins, 163 U. S. 625
United States v. Hicks, 947 F.2d 1356, 1360 (9th Cir. 1991)
United States v. Nat'l Bank of Commerce, 472 U.S. 713,
721 (1985)
US v. James Daniel Good Real Property, 114 S. Ct. 492 (1993) page 498 II [1]
Wisconsin v. Constantineau, 400 U.S.433,

STATUTES

Administrative Procedures Act (5 USC §552(a) (1))
Federal Register Act (44 USC Chapter 15)
26 CFR, Subtitle A, Part 1
26 CFR § 1.1.1 (c)
26 CFR § 1.911-2(g)
18 USC § 241
19 CJS § 884
26 USC § 865 (g) (A) (1)
26 USC § 3121 (e)
26 USC § 6020
26 USC § 6020 (b)
26 USC § 6321
26 USC § 6322
26 USC § 6331
26 USC § 7343
26 USC § 7701(8)(14)
26 USC § 7701 (b) (1) (B)
26 USC § 7805 (a)
27 CFR § 53.6020
27 CFR § 70.6020
27 CFR § 70.632

I. PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Wayne Douglas respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

II. OPINION

The decision of the United States Court of Appeals for the Fifth Circuit is attached as Appendix 1 (App. 1).

III. JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was issued April 15, 2009. This Court has jurisdiction over this petition under 28 USC §1254(1).

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Internal Revenue Code beginning with 26 USC § 7701 (8) (14) contains definitions of TAXPAYER, persons, citizen, United States and etc. for the classification of individuals and entities for legal and lawful application of the code.

The 5th and 14th Amendments of the Constitution guarantee individuals will not be deprived of property without due process.

The Federal Register Act (44 USC Chapter 15), Administrative Procedures Act (5 USC § 552(a) (1)) and 26 USC §7805 (a); combine for the statutory basis requiring regulations.

V. STATEMENT OF THE CASE

This case is about three questions regarding the label of TAXPAYER, due process and the existence of lawful and legal regulations.

The IRS labeled and treated the petitioner as a TAXPAYER against his will. The IRS took funds from two accounts of the petitioner without any due process hearing in a court of law and in the absence of any court order against his will. The IRS prepared Income Tax Returns without any permission from the petitioner, signature or legal authority against his will.

The Internal Revenue Code defines a TAXPAYER thereby establishing the fact that some people, entities, organizations and groups are TAXPAYERS and some individuals' NON-TAXPAYERS. The Constitution guarantees the petitioner due process. There is no regulation for 26 CFR, Subtitle A, Part 1 of the Internal Revenue Code that authorizes neither the assessment of taxes nor the issuance of a Notice of Lien or Levy against the petitioner.

Robert W. Douglas is the petitioner. He is a Texas Certified Public Accountant (license on hold). He has a BBA, MBA and M. Div. degrees. The petitioner is an Elder in the United Methodist Church. The petitioner was in private practice as a sole practitioner for 17 years prior to a church appointment in the Southwest Texas Conference of the United Methodist Church.

On July 13, 2007 petitioner filed a complaint seeking injunctive relief and damages for unlawful and destructive Notice of Lien and Levy against

United States and Kevin M. Brown in official capacity as Acting Commissioner of IRS and in capacity as representative of the named and unnamed agents, employees, and officers individually and collectively in both private and personal capacity acting under the common name Internal Revenue Service and/or Internal Revenue Service Department of Treasury. The petitioner also claimed recovery of unlawfully collected money. The respondent filed a Motion To Dismiss Unnecessary Party. The petitioner filed a response. The Magistrate Judge's report was affirmed and a partial dismissal affirmed by District Judge. A scheduling order was filed. The petitioner consented to ADR and the respondent refused. A summons was received by petitioner from the respondent and a Motion for Protective Order and Criminal Investigation was filed by petitioner and denied by the District Court. An offer to settle was offered by the petitioner and refused. The United States moved for summary judgment based on a Declaration and Certificates of Official Record. The petitioner objected and filed a motion to strike the Declaration and Certificates of Official Record because of code violations, missing facts, posting errors and incorrect data. The petitioner filed objections to the recommendations made by the Magistrate Judge. The petitioner filed a motion for summary judgment. The District Judge conducted a *de novo* review and granted the respondents summary judgment. The petitioner filed a motion for new trial. The motion for new trial was denied and petitioner appealed the ruling of the District Court.

The Fifth Circuit Court of Appeals held in affirmation the ruling of the District Court. The Fifth Circuit Court rejected the petitioner's claim that he was a NON-TAXPAYER domiciled in the State of Texas and his refusal to volunteer and affirmed the authorization of IRS according to 26 USC §6020 (b). The court held that IRS acted properly in levying the petitioner's funds. (App.1, pg 27)

The court rejected the petitioner's claim that the assessments and levies were improper. The Fifth Circuit Court affirmed the decision of the District Court that the amount received of $764.34 from Frost Bank and $69.93 from Wachovia Bank as well as a liability of $168,139.99 were properly assessed and collected. (App.1, pg 26)

The court rejected the petitioner's claim that his authorization or a court order is required by law before a levy can be issued. The Fifth Circuit Court held that failure "to pay assessed taxes, the amount he owes, plus any interest and penalties, becomes a lien in favor of the United States automatically." (App.1, pg 26)

The court said "Further, Douglas is mistaken in arguing that there had been no implementing regulations passed that would empower the government to make assessments or collections under the Internal Revenue Code." (App.1, pg 26) The Fifth Circuit Court stated that "[n]umerous regulations have been promulgated concerning the IRS assessment and collection authority". (App.1, pg 26)

The Fifth Circuit Court stated "courts have consistently held that provisions of the Code do not have to be implemented by regulation in order to be effective. (App.1, pg 27)

The court rejected the petitioner's claim for refund and held that "A TAXPAYER must file an administrative claim with the IRS before seeking a refund in court." (App.1, pg 27)

The court also held that "A TAXPAYER seeking a refund must also prove that he has paid IRS-assessed liability in full before filing suit." The court rejected the petitioner's claim "that the IRS committed 'fraud' by filling out returns on his behalf as authorized by I.R.C. § 6020 (b) is frivolous." (App.1, pg 27)

Finally the court held that "the IRS acted properly in levying his funds and Douglas is not entitled to a refund." (App.1, pg 27)

VI. REASONS FOR GRANTING THE WRIT

The Constitution for the United States of America, Article VI, Cl. 2 states: "This Constitution, and the laws of the United States which shall be made in pursuance thereof;... shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby... the Senators and Representatives and members of the State legislatures and all executive and judicial officers of the United States and the several States, shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

The Supreme Court has consistently ruled that anything contrary to the Constitution is null and void as held in *Marbury v. Madison*, US 137, 174, 176. As noted in *Miranda, v. Arizona*, 384 US 436 p.491 the Supreme Court held that "where our rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them." Finally "waivers of constitutional rights not only must be voluntary, they must be knowingly intelligent acts done with sufficient awareness of the relevant circumstances and consequences according to the Supreme Court case *Brady v. U. S.*, 397 U. S. 742 at 748.

The Fifth Circuit Court assumed that the petitioner was a TAXPAYER without considering the statutory definition, because the denial of NON-TAXPAYER status is clearly stated absent of any reference to a statute or regulation.

The Fifth Circuit Court held that the petitioner was not entitled to a hearing in court, because the "administrative collection scheme by means of Levy is constitutional." (App.1, pg 26) Who has the power to say that the petitioner's Constitutional Right to due process can be waved? The Fifth Circuit Court also held that IRC § 6020 was applicable to the petitioner without the existence of a regulation issued by the Secretary. (App.1, pg 27) How can a statute that has application to so many sections of the code as well as Alcohol, Tobacco and Firearms be promulgated into regulations for some and not 26 CFR, Subtitle A, Part 1 Income Tax and then claimed as the authority for assessment and enforcement?

According to one of our Framers "'The words 'due process' is a precise technical import, and only applicable to the process and proceedings of the court's of justice; they can never be referred to an act of legislature" Alexander Hamilton, Remarks on an Act for Regulating Elections, New York Assembly, 6 February 1787, in 4 Papers of Alexander Hamilton 34, 35 (Harold C. Syrett ed., 1962)[1].

An overwhelming amount of the evidence sufficient to support reasons for granting the writ, are found within the ruling of the United States Court of Appeals for The Fifth Circuit.

The Fifth Circuit erred in labeling the petitioner as a TAXPAYER without accurately applying the Internal Revenue Code's definition. The Fifth Circuit erred in holding that Congress, Quasi Federal Governmental Agencies and Federal Governmental Agencies have the power under Internal Revenue Code and regulations to deny the 5th Amendment of the Constitution guaranteeing due process to the petitioner. The Fifth Circuit erred in holding that Statutes 26 USC §§§ 6020, 6321 and 6322 authorize assessment and enforcement authority within 26 CFR, Subtitle A, Part 1 Income Tax, thereby binding upon petitioner.

The petitioner read the definitions found within the Internal Revenue Code for TAXPAYER, verifying his NON-TAXPAYER status. The petitioner read the Fifth Amendment to The Constitution and understands that his due process rights have been

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[1] Blacks Law Dictionary , Deluxe Eighth Edition, page 539

violated. The petitioner has searched for assessment and enforcement regulations throughout 26 CFR, Subtitle A, Part 1 authorizing 26 USC §§§ 6020, 6321, and 6322 and found none. The petitioner has searched all of the regulations and found that no regulation authorizes any agency to assess graduated income taxes and issue levies against him without a day in court.

This Court should grant a review based upon the Fifth Circuit Court ruling that conflicts with the Constitution, Supreme Court rulings, and statutes. The authority of this court to supervise the severely unjust rulings of the lower courts is requested here also.

VII. Conflict: Fifth Circuit Court With The Constitution

The Fifth Circuit Court held that administrative collection scheme by means of levy is constitutional citing *United States v Nat'l Bank of Commerce,* 472 U. S. 713, 721 (1985). (App.1, pg 25)
The holding is off point and in direct conflict with the Fifth Amendment of the constitution guaranteeing due process. The cited case addresses the question of whether state law can prevent a levy upon a TAXPAYER'S joint account and the bank's refusal to release the funds because of an inability to discern the amount owned by the TAXPAYER. The definition of TAXPAYER, due process guarantee, and the absence of regulations did not appear as questions in that case.

According to the 5th and 14th Amendments an individual is entitled to a guarantee of due process.

That guarantee has been claimed by the petitioner as a born and bred Texan.

The Fifth Circuit Court held that "As of shortly thereafter, Douglas had unpaid federal income tax liabilities of 94,554.90 for 2000, 11,216.41 for 2001, 10,937.18 for 2002 and 12,764.23 for 2003. (App.1, pg 24)

The Constitution states in Article I, §2, Cl. 3, that "Direct taxes shall be apportioned" and, in Article 1, §9, Cl. 4 that "No Capitation or other direct tax". The petitioner challenges the Constitutionality of the holding that the petitioner has unpaid federal income tax liabilities.

The petitioner was denied a day in court prior to levies and liens. The petitioner was assessed without his consent or signature on any return bearing such assessments. Both are violations of the petitioners Constitutional Rights and indirect conflict with the Constitution.

VIII. Conflict: The Fifth Circuit Court With Statutes

The Fifth Circuit Court of Appeals held that the petitioner is a TAXPAYER with no proof or reference to the statutory definition, while noting within the decision the petitioner's claim of NON-TAXPAYER status. (App.1, pg 27)

The Fifth Circuit Court could only assume that the petitioner was a TAXPAYER, because a close reading of the statutory definition would at minimum give rise to question the classification. The court' s assumption is in direct conflict with the

statute. The petitioner is a declared NON-TAXPAYER as is noted in the decision of the Fifth Circuit Court, "Douglas finally argues that the District Court erred in denying his motion for summary judgment because he is a NON-TAXPAYER". (App.1, pg 27)

The Fifth Circuit Court order contains incriminating references labeling the petitioner as a TAXPAYER "Douglas based on returns prepared under I.R.C. § 6020 (b) which authorizes the IRS to create returns for TAXPAYERS who fail to file or file a fraudulent return", "Douglas had unpaid federal income tax liabilities", "A TAXPAYER must timely file an administrative claim with the IRS before seeking a refund in court" "A TAXPAYER seeking a refund must also prove that he has paid the IRS-assessed liability in full before filing suit" and "As discussed above, the IRS acted properly in levying his funds and Douglas is not entitled to a refund." (App.1, pg 27)

26 USC §7701(8) (14) "defines a TAXPAYER as a **person** subject to any internal revenue tax."

26 USC § 7343 defines **person** as used in this chapter includes an officer or employee of a corporation or member or employee of a partnership who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

The petitioner is a nonresident alien.

26 CFR § 1.1.1 (c) "who is a citizen, every person born or nationalized in United States and subject to its jurisdiction is a citizen."

26 CFR § 1.911-2(g) "the term United States when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states and the District of Columbia the possessions and territories of the United States, the territorial waters of the United States – space over the United States and the seabed and subsoil of those sub Marine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights in accordance with international law..."

26 USC §3121 (e) define state as "for the purposes of this chapter – (1) STATE-the term 'state' includes the District of Columbia the Commonwealth Puerto Rico, the Virgin Islands, Guam and America Samoa."

26 USC § 865 (g) "United States resident; nonresident For purposes of this section-(I) In general Except as otherwise provided in this subsection-(A) United States resident means (i) an individual who (1) is a United States citizen or resident alien and does not have a tax home in a foreign country or (II) is a nonresident alien and has a tax home (as so defined) in the United States, and (ii) any corporation, trust, or estate which is a United States person (as defined in section 7701 (a) (30)). (B) Nonresident The term "nonresident" means any person other than a United States resident."

26 USC §7701 (b) (1) (B) "nonresident alien individual is a non-resident alien if such individual is neither a citizen of the United States or a resident of the United States."

The definition of TAXPAYER according to 26 USC §7701 (8) (14) doesn't fit the petitioner.

The Fifth Circuit Court of Appeals held that "between 2000 and 2003 the IRS assessed taxable liability against Douglas based on returns prepared under IRC § 6020 (b) which authorizes the IRS to create returns for TAXPAYERS who fail to file or file fraudulent returns". (App.1, pg 25)

This conflict has resulted in the petitioner's illegal and unjust classification as a TAXPAYER rather than NON-TAXPAYER. It is true that statutes exist as regulations for persons, citizens, TAXPAYERS defined in the code and are enforceable. The petitioner subscribes to the Federal Register Act (44 USC Chapter 15) which requires an implementing regulation be published in the Federal Register, the Administrative Procedures Act (5 USC § 552(a)(1)) which requires that any substantive rule must be published at least 30 days before its effective date to provide an opportunity for public comment, prior to being promulgated into law and 26 USC §7805(8) which states "the Secretary shall prescribe all needful rules and regulations for the enforcement of this title".

The petitioner searched for regulations for 26 CFR, Subtitle A, Part 1 Income Tax and found none. The petitioner did fine 27 CFR §70.6020, 27 CFR

§53.6020, 27 CFR §70.6321 and no regulation at all was found for 26 USC §6322.

In *Botta v. Scanlon,* 288 F2d 5504 (2nd Cir 1961) the court stated "A reasonable construction of the taxing statues does not include vesting any tax official with absolute power of assessment against individuals not specified in the statues as person liable for tax without an opportunity for judicial review of their status before appellation of 'TAXPAYER' is bestowed upon them and their property is seized and sold..."

The courts have also said in *Economy Plumbing and Heating Co. v. United States,* 470 F.2d 585 (1972) that "the revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to NONTAXPAYERS. The latter are without their scope. No procedure is prescribed for NONTAXPAYERS, and no attempt is made to annul any of their rights and remedies in due course of law. With them [NONTAXPAYERS] Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws."

The Fifth Circuit Court ruled in direct conflict with other courts, statutory definitions and requirements for regulations.

IX. Conflict: The Fifth Circuit Court With The Supreme Court

A. Due Process

The Fifth Circuit Court of Appeals held that "when a TAXPAYER fails to pay assessed taxes, the

amount he owes, plus any interest and penalties, becomes a lien in favor of the United States automatically. IRC §§ 6321 and 6322." The Court further stated that "the Supreme Court has held that the administrative collection scheme by means of Levy is Constitutional. See, e.g. *United States v. Nat'l Bank of Commerce,* 472 U.S. 713, 721 (1985)" (App.1, pg 26)

The Supreme Court has said in *Marbury v. Madison*, US 137, 174, 176 "All laws which are repugnant to the Constitution are null and void" and in *Miranda, v. Arizona*, 384 US 436 p.491 "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them".

The Supreme Court ruled in *Almeida-Sanchez v. United States,* 413 US 266, 272, 37 L Ed 2d 596, 93 S Ct. 2535 (1973) ".. No Act of Congress can authorize a violation of the Constitution."

The Supreme Court in *Sniadach v. Family Finance Corp. of Bay View,* et al 395 U.S. 337, 23 L Ed 2d 349, 89 S. Ct. 1820(1969) ruled before affirming the guarantee of due process., "the question is not whether the law is a wise law or an unwise law... In this case the sole question is whether there has been a taking of property without that procedural due process that is required [under the Constitution]..." That is exactly one of the questions in this case, yet the Fifth Circuit Court affirms a different answer.

The Supreme Court ruled in *U.S. v. James Daniel Good Real Property,* 114 S. Ct. 492 (1993) page 498

II [1] "the Due Process Clause of the 5th Amendment guarantees that 'no person shall... be deprived of life, liberty or property without due process of law'. Our [the Supreme Court's] precedents established the general rule that individuals must receive notice and an opportunity to be heard before the government deprives them of property."

The Supreme Court ruled in *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552, 31 L.Ed.2d 424, 435; 92 S. Ct 1113 " the prohibition against deprivation of our property without due process of the law reflects the high value imbedded in our Constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference."

The Supreme Court ruled in *Bell v. Burson,* 402 U.S. 535, 542, *Wisconsin v. Constantineau,* 400 U.S.433, *Goldberg v. Kelly,* 397 U.S. 254, and *Armstrong v. Manzo,* 380 U.S. 551 and agreed "the right to a prior hearing has long been recognized by this Court [Supreme Court] under the Fourteenth and Fifth Amendments...{T}he Court has traditionally insisted that, whatever its form, **opportunity for that hearing must be provided before the deprivation at issue takes place."**

The Fifth Circuit affirmed that the Supreme Court has held that the IRS can legally, lawfully and constitutionally deny the petitioner's right to due process. There is obvious conflict between what was held by the Fifth Circuit Court and superior case law.

B. Regulations

The Fifth Circuit Court cites a tax court case and a Ninth Circuit Court case as the legal basis for concluding that regulations are not required.

There are three statutes codifying requirements for regulations and six Supreme Court cases documenting the requirement for regulations. There are no regulations for 26 CFR, Subtitle A, Part 1 under 26 USC §§§ 6020 (b), 6321 or 6322.

The Supreme court ruled in *Bushmann v. Schweiker,* 676 F.2d 352(1982) " a regulation is invalid if the agency fails to follow procedure required by the Administrative Procedures Act (5 U.S.C.).

The Supreme Court ruled in *Hotch v. United States,* 212 F.2d 280(1954) "Non-published orders are null and void against a state Citizen."

The Supreme Court ruled in *California Bankers Assoc. v. Shultz,* 416 U. S. 25, 44, 39 LE d2d 812, 94 S Ct 1494 "... the act's civil and criminal penalties attach only upon the violation of a regulation promulgated by the Secretary; if the secretary were to do nothing, the act itself would impose no penalties on **anyone**... only those who violate the regulation (not the Code) may incur civil or criminal penalties, it is -- a regulation issued by the Secretary of the Treasury and not the broad authorizing language of the statute, which is to be tested against the standards of the 4th Amendment."

The word **anyone** would include the petitioner.

The Supreme Court ruled in *U. S. v. Mersky,* 361 US 41, (1961) "... the result is that neither the statute nor the regulation is complete without the other and only together do they have any force in effect that for the construction of one necessarily involves the construction of the other". **This case confirms no regulation no violation and certainly no authority to assess taxes or take any money without due process.**

Certainly there is a conflict between what the Supreme Court has said in previous cases and what the Fifth Circuit Court has said in the petitioner's case.

How could the District Court and Fifth Circuit Court ignore the Supreme Court rulings in *Dodd v. United States,* 223 F Supp 785 and *Lyeth v. Hoey,* 305 US 188, 59 S. Ct., " For federal tax purposes, federal regulations govern".

The Fifth Circuit Court itself ruled in *Arzanipour v. Immigration and Naturalization Service,* 866 F. 2d 743, 746 (5th Circuit) that "failure to adhere to agency regulations may amount to denial of due process if regulations are required by the constitution or statute." The case cited above is indicative of internal conflict within the Fifth Circuit. In the petitioner's case the court said "that courts have consistently held that provisions of the code do not have to be implemented by regulation in order to be effective." (App.1, pg 27) The law does not decide effective it requires and adjudicates legal and lawful. The Fifth Circuit Court is required by oath to protect the Constitutional rights of people and not to weigh effectiveness, because certainly

something can be effective and at the same time illegal. There is conflict because the Fifth Circuit Court chose to cite a tax court case (Stafford v. Commissioner, 73 T.C.M. (CCH) 1848, 1851-1852 (1997) and a Ninth Circuit Court case (United States v. Hicks, 947 F.2d 1356, 1360 (9th Cir. 1991) while saying "Further, courts have consistently held that provisions of the code do not have to be implemented by regulation in order to be effective" while numerous Supreme Court cases are superior and address the specific questions in the petitioners case.

There is obvious conflict between what the Supreme Court has said and the Fifth Circuit Court has held. Some of that conflict is internal.

X. Severe Injustice

Given the conflicts and obvious lack of clarity, one must conclude that there are TWO jurisdictions. One jurisdiction where the Constitution is the Supreme Law of the land and another jurisdiction where any Statute passed by the Legislature and signed by the President is the governing law. In each case cited the common classification of the entity or person liable is TAXPAYER. TAXPAYER is the determining factor for assessment and/or tax liability. Because not everyone is a TAXPAYER, by statutory definition, therefore some are NON-TAXPAYERS. Statutes apply as written to TAXPAYERS and the Constitution to NON-TAXPAYERS according to the definitions cited above.

A TAXPAYER is subject to Internal Revenue Code by residence, employment and/or contract. If an

individual lives in the Constitutional area of 10 square miles, or areas defined in 26 CFR §1.911-2(g) and 26 USC § 3121 (e) then they are a TAXPAYER by residence. According to 19 CJS § 884 "The United States government is a foreign corporation with respect to a State" See, *U. S. v. Perkins,* 163 U. S. 625

The Constitution for the United States, Article I, §8, Cl. 17. "The Congress shall have the power...To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may be cession of particular states and the acceptance of Congress, before the seat of the Government of the United States [District of Columbia] and to exercise like authority over all places [federal enclaves] purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings; and-to make all laws which shall be necessary and proper for carrying into execution the foregoing Powers..."

Article IV § 3, Cl. 2. "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

The Supreme Court held in *Caha v. United States,* 152 U. S. 211, 215, 14 S. Ct. 513 (1894) that "the laws of Congress in respect to those matters do not extend into the territorial limits of the states, but

have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

If an individual works for the Federal Government or is an officer of a entity created by law then they are a TAXPAYER by employment or revenue source.

Lastly, an individual can voluntarily enter into a contract with the IRS by signing a return and thereby a TAXPAYER by contract.

In the petitioner's case he has never resided in federal territory or worked for the Federal Government or functioned as an officer of a legally created entity.

The petitioner for the years 1999-2003 signed a demand for all funds collected canceling any perceived contract. The respondent in an effort to secure a contractual signature issued a Summons. The petitioner lawfully refused to appear and filed a Motion for Sanction Rule 16 f, Protective Order Rule 26 c and Criminal Investigation 18 USC § 241. The Magistrate Judge issued an order denying the motion citing a statute that does not exist as a regulation. (App.2, pg 28) The petitioner was threaten by U.S. Department of Justice days after the order was issued with criminal prosecution if he failed to attend the new scheduled meeting date and time according to the Summons. (App.3, pg 31)

The Fifth Circuit Court of Appeals refers to the petitioner's claim of status regarding residence, employment and refusal to contract. (App.1, pg 27)

The petitioner declares he is a NON-TAYPAYER non resident alien in accordance with the definition prescribed in the statutes and thereby respectfully demands that his Constitutional Rights be protected in this court while in other courts protection has failed.

XI. CONCLUSION

The petitioner respectfully demands that this court exercise supervisory authority over the Fifth Circuit Court of Appeals for clear and obvious abuse of judicial authority in the application of Federal Statutes, denial of Constitutional Rights, and failure to interpret requirements for regulations.

The petitioner knows the law as it pertains to his Constitutional rights and knows that they have been violated by the respondent unjustly and illegally. Most disturbing is that the District Court granted a summary judgment based upon evidence certified by the respondent that was flawed, given conclusive evidence presented in the Plaintiff's Memorandum In Response To Defendant's Motion For Summary Judgment. (Docket 34, Attachment 3)[2] The most deplorable matter is the large assessment that is based upon a 1099 S unsigned under penalty of perjury, which reports income from the sale of real property. Every federal tax agent and officer knows that any real property has basis regardless of how ownership was secured, if not simply because land cannot be depreciated. The respondent applied no basis to the real estate thereby treating the entire 1099 S amount as

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[2] Reference to the record of the United States, Western District Court SA-07-CA-0593-OG

income which now stands affirmed by the Fifth Circuit Court of Appeals. Thus far this case has amounted to a financial lynching of the petitioner for standing up for his Constitutional Rights at the hands of the very ones that took an oath to uphold them.

For the foregoing reasons, petitioner submits that this Court must grant review in this case to reverse the holding of the Fifth Circuit Court with respect to the respondent's power to falsely label an individual, take money without due process and affirm illegal and unauthorized assessment and enforcement actions.

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 15, 2009
Charles R. Fulbruge
III
Clerk

No. 08-50916
Summary Calendar

D.C. Docket No. 5:07-CV-593-OG

ROBERT W DOUGLAS
Plaintiff-Appellant

v.

UNITED STATES
Defendant-Appellee

FILED
JUN 15 2009
CLERK, U.S.
DISTRICT COURT
WESTERN DISTRICT
OF TEXAS
BY s/
DEPUTY CLERK

Appeal from United States District Court for the Western District of Texas at San Antonio

Before King, Dennis, and Owen, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

It is further ordered that plaintiff-appellant pay to defendant-appellee the cost on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: 09 JUN 2009

A True Copy
Attest

Clerk, U.S. Court of Appeals, Fifth Circuit

By: s/

New Orleans, Louisiana 09 JUN 2009

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 15, 2009
Charles R. Fulbruge III
Clerk

No.08-50916
Summary Calendar

ROBERT W. DOUGLAS

Plaintiff-Appellant

v.

UNITED STATES

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC 5:07-CV-593

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Appellant Robert W. Douglas failed to pay the income taxes he owed for multiple years, including at least 1998 and 2000-2003. Between 2000 and 2003 the IRS assessed tax liabilities against Douglas based on returns prepared under I.R.C. § 6020(b) which authorizes the IRS to create returns for taxpayers who fail to file or file fraudulent returns. In May 2006, the IRS mailed

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Douglas a notice of intent to levy with respect to his 1998 and 2000-2003 taxable years.

Douglas requested a collection-due-process hearing under I.R.C. § 6330 to contest the levies, but the IRS Appeals Office concluded that the assessments were properly made. The IRS issued notices of levy in May 2007 to two banks, reflecting a total amount due of $168,139.99; the IRS was able to collect $764.34 from Frost National Bank and $69.93 from Wachovia Bank. These levys satisfied the 1998 deficiencies. As of shortly thereafter, Douglas had unpaid federal income tax liabilities of $94,554.90 for 2000, $11,216.41 for 2001, $10,937.18 for 2002 and $12,764.23 for 2003.

Douglas filed a complaint in the district court on July 13, 2007, seeking damages for alleged unauthorized collection actions in connection with the levys on his bank account, refunds of federal income tax, and injunctive relief. The district court granted summary judgment to the IRS. We now affirm.

We review a grant of summary judgment *de novo*. *Texas Industries, Inc. v. Factory Mutual Ins. Co.*, 486 F.3d 844, 846 (5th Cir. 2007). Douglas argues first that the levys required his authorization or court order. But when a taxpayer fails to pay assessed taxes, the amount he owes, plus any interest and penalties, becomes a lien in favor of the United States automatically. I.R.C. §§ 6321, 6322. The Supreme Court has held that the administrative collection scheme by means of levy is Constitutional. See, e.g., *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 721 (1985). Further, Douglas is mistaken in arguing that there have been no implementing regulations passed that would empower the government to make

assessments or collections under the Internal Revenue Code. In fact "[n]umerous regulations have been promulgated concerning [the IRS's] assessment and collection authority." *Stafford v. Commissioner,* 73 T.C.M. (CCH) 1848, 1851-52 (1997). Further, courts have consistently held that provisions of the Code do not have to be implemented by regulation in order to be effective. See, e.g., *United States v. Hicks,* 947 F.2d 1356, 1360 (9th Cir. 1991)

Douglas also appears to demand a refund. A taxpayer must file an administrative claim with the IRS before seeking a refund in court. *PALA, Inc. Employees Profit Sharing Plan & Trust Agreement v. United States,* 234 F.3d 873, 877 (5th Cir. 2000). A taxpayer seeking a refund must also prove that he has paid the IRS-assessed liability in full before filing suit. *Flora v. United States,* 362 U.S. 147, 177 (1960). Douglas has failed to do either. His argument that the IRS committed "fraud" by filling out returns on his behalf is authorized by I.R.C. § 6020(b) is frivolous. Douglas is thus not entitle to a refund for any payments made or amounts levied by the IRS.

Douglas finally argues that the District Court erred in denying his motion for summary judgment because he is a "non-taxpayer." According to Douglas, he was born and domicile in the State of Texas and has refused to "volunteer" to pay income tax, and no federal statute requires him to pay taxes because he is not an employee of the federal government. Douglas unsurprisingly cites no law in support of these claims. As discussed above, the IRS acted properly in levying his funds and Douglas is not entitled to a refund. The judgment of the district court is **AFFIRMED**.

APPENDIX 2

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROBERT W. DOUGLAS,	§	
Plaintiff,	§	
	§	
	§	
v.	§	CIVIL ACTION NO.
	§	SA-07-CA-593-OG
	§	
UNITED STATES	§	
OF AMERICA,	§	
Defendant.	§	

ORDER

Came on this day to be considered the motion of pro se plaintiff for sanctions, a protective order and a "criminal investigation" of the United States filed March 4, 2008, and the United States' response filed March 18, 2008.

This case, initiated by plaintiff acting pro se, appears to be a refund suit under 26 U.S.C. §7422 combined with a request for damages under 26 U.S.C. §7433. Plaintiff's request for a protective order, sanctions, and investigation appear to relate to the service of an IRS summons on plaintiff on or about February 19, 2008, which commanded plaintiff to appear before an IRS revenue officer on March 5, 2008.

The IRS summons at issue, a copy of which is attached to the plaintiff's motion, appears to relate to an effort of IRS to assess or collect federal income

taxes. Plaintiff's request appear to be barred by 26 U.S.C. § 7421. Further, there is a separate statutory scheme that applies to actions to enforce or quash summons.

Upon consideration thereof,

IT IS ORDERED that plaintiff's motion for sanctions, a protective order and criminal investigation (docket no. 25) is DENIED.

ORDERED, SIGNED and ENTERED this 18th day of March, 2008.

s/
Pamela A. Mathy
UNITED STATES MAGISTRATE JUDGE

APPENDIX 3

U.S. Department of Justice
United States Attorney
Western District of Texas
Civil Division

Please reply to: 601 NW Loop 410, Suite 600
San Antonio, TX 78216-5512
FAX (210) 384-7105
(210) 384-7100

300 East 8th Street, Suite 601 MAILSTOP 2000AUS
Austin, Texas 78701
(512) 499-5440
FAX (512) 499-5686

MAR 20 2008

CC: SB: 6: AUS: GL-112865-08
BMWilpon

Robert W. Douglas
14 Deerhurst
San Antonio, TX 78218-6028

Dear Mr. Douglas:

The Area Manager of Internal Revenue Service (IRS) has notified this office that you have not fully complied with the provisions of the summons served upon you on February 20, 2008. As you will recall, that summons required you to appear before Revenue Officer Heriberto Almodovar, on March 5, 2008, and testify and/or produce books, records or other documents as specified therein.

This office is charged with the responsibility for seeking judicial enforcement of administrative summonses issued by federal agencies such as the IRS. Accordingly, this office is prepared, if necessary, to commence legal proceedings in the United States District Court seeking your full compliance with the IRS summons that has been issued to you. Before proceeding, however, it is our practice to afford persons such as yourself with one last chance to comply at the administrative level prior to this office having to become involved. Accordingly, we ask that you appear before Revenue Officer Heriberto Almodovar, or his designee at the following time and place:

Date: April 7, 2008
Time: 8:00 a.m.
Address: 8700 Tesoro
Drive, Ste: 201C
San Antonio, TX 78217

You should appear prepared to testify and/or produce any books, records, or other documents called for in the summons. If you have any questions, please contact Revenue Officer Heriberto Almodovar, at (210) 841-2409. You are also welcome to contact attorney Bruce Wilpon by telephone at (512) 499-5515, or by mail at IRS-Office of Chief Counsel, 300 E. 8th Street, Suite 601, Austin, Texas 78701

Very truly yours,
Johnny Sutton
United States Attorney

By: s/
John F. Paniszczyn
Chief, Civil Division

Enclosure: Copy of Summons

cc. IRS, SBSE
Attn: Heriberto Almodovar
Stop 5320 SANC